IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10377 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAMBHIRSINH BHARATSINH ZALA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on November 22, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Gambhirsinh Bharatsinh Zala under the

provisions of the PASA Act.

#. Grounds of detention indicate that the detaining authority took into consideration three offences registered against the detenue under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of the incidents dated October 30, 1999 and November 2, 1999. The detaining authority exercised powers under section 9(2) of the PASA Act in respect of these two witnesses after recording satisfaction that the statements are correct and the fear expressed by them qua the petitioner is genuine. After considering the less drastic remedies, the detaining authority found that the detention under the PASA Act is the only efficacious remedy as the petitioner is required to be immediately prevented form pursuing his activities.

#. The petitioner has challenged the detention order on various grounds. Mr. Prajapati, learned advocate appearing for the petitioner has, however, restricted his arguments to the fact that the representation made on behalf of the detenue on December 20, 1999 has not been expeditiously responded to by the authorities concerned. He therefore, submitted that the right of the detenue of making an effective representation is infringed and the continued detention is rendered bad in law. The petition may, therefore, be allowed by quashing and setting aside the order of detention.

#. Mr. K.T. Dave, learned AGP, has opposed this petition. He, after consulting the file, made available to him by the officer from the department concerned, submitted that the representation dated December 20, 1999 was received by the government on December 22, 1999. The representation was decided and rejected on December 27, 1999. However, the government accepted the demand for documents and directed the detaining authority to supply the documents on that very day. Mr. Dave submitted that the detaining authority, acting upon such direction has supplied the documents demanded in the representation on February 8, 2000. He therefore, submitted that the representation has been expeditiously considered and right of the detenue is not adversely affected. The petition may, therefore, be dismissed.

#. Having regard to rival side contentions, an undisputed fact that emerges is that the representation dated December 20, 1999 has been considered on December 27, 1999 by the government and direction is issued to the detaining authority to supply the documents demanded in

the representation. The detaining authority has acted upon this direction on February 8, 2000 i.e. almost after one month and two days. The delayed supply of documents by the detaining authority has affected the right of the detenue of making an effective representation. In fact, if the representation is seen, what is demanded are the statements of witnesses relating to CR No. 5176/97 which have been relied upon by the detaining authority while passing the order of detention and it was therefore, expected of the detaining authority to have considered and supplied these documents to the detenue along with the grounds of detention and therefore, the right of the detenue of making an effective representation can be said to have affected due to non-supply/delayed supply of the relevant documents. This would vitiate the continued detention of the detenue and the petition, therefore, deserves to be allowed on this ground.

#. The petition is allowed. The impugned order of detention dated November 22, 1999 is quashed and set aside. The detenue - Gambhirsinh Bharatsinh Zala is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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